Supreme Court, U.S.
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No. 02-1060

In the Supreme Court of the United States

ILLINOIS,

Petitioner,

vs.

ROBERT S. LIDSTER,

Respondent.

On Petition for Writ of Certiorari to the Supreme Court of Illinois

REPLY BRIEF FOR PETITIONER

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ARGUMENT

Certiorari should be granted because this case presents an important legal question about the scope of *Indianapolis v. Edmond*, 531 U.S. 32 (2000), and because two state supreme courts stand in direct conflict on the question presented. Specifically, that question is whether *Edmond* prohibits police officers from conducting a roadblock with the primary purpose of investigating a prior offense, where the stopped motorists were handed flyers and only asked if they had witnessed the fatal hit-and-run, and were not, themselves, searched for evidence of criminal activity, and where the roadblock was otherwise reasonable under *Brown v. Texas*, 443 U.S. 47 (1979).

Erroneously assuming that *Edmond* controls this case, Respondent claims that the Petition "presents no issue not previously resolved by this Court." (Opp. Brief at 2).[1] Respondent's mistake derives from his inability to distinguish the instant checkpoint program from the one involved in *Edmond*. Respondent argues that "crime control" should not only include the arrest of a perpetrator but should include any investigation or information-gathering that leads to the arrest. (Opp. Brief at 5). This argument over-simplifies the issue. "Crime control," as contemplated under *Edmond*, is not the arrest of *a* perpetrator of a known crime; it envisions the arrest of many perpetrators whose crimes are only discovered by the happenstance of a police stop. At checkpoints primarily aimed at crime control, officers look at each stopped motorist as if he is a potential criminal, searching for evidence of yet unlearned criminal activity. But, here, the primary purpose of the roadblock was not to control the incidence of crime in general; indeed, that was not even a secondary purpose:

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[1] "Opp. Brief" refers to Respondent's Brief in Opposition to Petition for Writ of Certiorari filed in this case.

Motorists were not asked for their names, drivers' licenses, or vehicle registrations. Nor were they searched for signs of impairment—or even seatbelt violations. This roadblock's lack of secondary purposes makes this an ideal case for review, as it presents a clean question about *Edmond*'s scope.

Claiming that this roadblock's purpose was to detect evidence of ordinary criminal wrongdoing, Respondent hints at a pretext or a hidden purpose behind the stated objective of the checkpoint. Specifically, Respondent states that a second officer, stationed at a side street to catch checkpoint evaders, defeats the declared purpose of the roadblock, which was to disseminate and gather information on a particular crime. (Opp. Brief at 2). Respondent further claims that other means existed to disseminate that information, specifically, media publication or posted flyers. *Id.* These claims are specious, inasmuch as the Illinois Supreme Court never challenged the primary purpose of the roadblock, and its ruling was based on the assumption that "[t]he purpose of the roadblock was to obtain information from motorists regarding a hit-and-run accident that took place one week earlier, at the same location, and at the same time of day." (Pet. App. at 1-2).[2] Further, the existence of alternative ways of disseminating information does not render the means chosen unreasonable.

Edmond did not create a *per se* rule against crime-specific informational roadblocks. Nor did it forsake the standard, three-part test for determining a roadblock's reasonableness, found in *Brown v. Texas*, 443 U.S. 47 (1979). In fact, this Court, in *Edmond*, carefully avoided limiting "the purposes that may justify a checkpoint

[2] "Pet. App." refers to the Appendix joined to Petitioner's Petition for Writ of Certiorari filed in this case.

program to any rigid set of categories," *Edmond*, 531 U.S. at 44, and provided that its holding would not alter the constitutional status of the checkpoints in *Michigan Department of State Police v. Sitz*, 496 U.S. 444 (1990), or *United States v. Martinez-Fuerte*, 428 U.S. 543 (1976), or the method of determining the constitutionality of those checkpoints, namely the *Brown* balancing test. *Edmond*, 531 U.S. at 47.

Even *Delaware v. Prouse*, 440 U.S. 648 (1979)—which Respondent misreads to advance his theory that suspicionless stops are invalid when their purpose is crime investigation—employed *Brown*'s balancing test. In fact, the stop in *Prouse* was invalidated because it, essentially, failed the effectiveness prong of the three-prong balancing test. Specifically, this Court found that, although states have a vital interest in ensuring that drivers are licensed and registered, the discretionary and random stop of a motorist to check his driver's license and registration is not a sufficiently productive means to address that interest. *Prouse*, 440 U.S. at 658-59. Significantly, *Prouse* suggested that the state's interest could be lawfully achieved by a checkpoint program, a suggestion this Court has affirmed in *Edmond*. *Edmond*, 531 U.S. at 39.

After practically ignoring *Brown*'s reasonableness test as a method of determining a roadblock's constitutionality, Respondent argues that one of the three elements of the test—the roadblock's effectiveness—is unsatisfied by the lack of empirical data in this case. (Opp. Brief at 6). But common sense dictates that a narrowly tailored roadblock, set up exactly one week after the crime, at approximately the same time of day—in order to stop motorists who travel a regular route to work—provides a reasonable likelihood of finding witnesses to the crime.

Respondent reiterates the concern expressed by the Illinois Supreme Court, that the allowance of crime-specific

informational roadblocks would threaten to make roadblocks routine. (Opp. Brief at 5). The State sufficiently addresses this concern in its Petition and rests on its response here.

Certiorari should further be granted because two state supreme courts stand in direct conflict on this issue. After evaluating the constitutionality of its roadblock under *Brown*'s reasonableness test, the Virginia Supreme Court, in *Burns v. Commonwealth*, 261 Va. 307, 541 S.E.2d 872 (2001), concluded that a roadblock organized with the primary purpose of investigating a particular murder that recently occurred in the area, was not unconstitutional under *Edmond*. *Burns*, 261 Va. at 324. This holding directly conflicts with the Illinois Supreme Court's holding that a roadblock, organized with the primary purpose of investigating a hit-and-run, was unconstitutional under *Edmond*.

Claiming no conflict exists, Respondent argues that the type of roadblock in *Burns* was contemplated in *Edmond* and excepted from its general rule.[3] (Opp. Brief at 6). Acknowledging *Edmond*'s two examples of roadblocks allowed in exigent circumstances—efforts to thwart an imminent terrorist attack and to catch a dangerous criminal likely to flee via a particular route—Respondent claims that the *Burns* checkpoint fits within the latter example. *Id.* In support, Respondent notes that *Burns* found its roadblock to fall within *Edmond*'s exigent circumstances exception, and claims that the instant roadblock lacks like exigencies. *Id.*

[3] Respondent also attempts to distinguish this case from *Burns* by questioning whether Burns was stopped at the roadblock and by noting that the evidence in that case would have been admissible even if the roadblock were invalid. Both attempts are fruitless. *Burns* clearly relied on a Fourth Amendment analysis, finding that "the circumstances under which Burns stopped his vehicle as he approached the roadblock was a 'stop' and thus a 'seizure' under the Fourth Amendment." *Burns*, 261 Va. at 883.

Although the *Burns* court may have used the phrase "exigent circumstances," it found that the primary purpose of that roadblock—to wit, a murder investigation—did not fall within *Edmond*'s proscription against roadblocks organized for the primary purpose of investigating ordinary criminal wrongdoing. *Burns*, 261 Va. at 322. Significantly, the *Burns* roadblock was not organized to directly *catch* the fleeing felon, as the *Edmond* exception exemplifies, but, rather, to investigate a murder. As law enforcement officers did not even know the felon's identity or whereabouts at the time of the roadblock, they intended only to canvass drivers in the area for witnesses to the crime. *Burns*, 261 Va. at 322.

In sum, *Certiorari* should be granted because this case involves an important legal question about *Edmond*'s scope and application, and because two state supreme courts stand in conflict on this issue. At stake is the ability of law enforcement officers to perform their timeless and necessary functions of identifying witnesses to crimes.

CONCLUSION

For the aforementioned reasons, Petitioner, the State of Illinois, respectfully requests that this Honorable Court grant *Certiorari*, reverse the decision of the Supreme Court of Illinois, and remand for further proceedings.

Respectfully submitted,

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